

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BLITZ NV, LLC,

Plaintiff(s),

v.

INTERACTIVE GAMES TECHNOLOGIES,
INC.,

Defendant(s).

Case No. 2:21-CV-1890 JCM (DJA)

ORDER

Presently before the court is defendant Interactive Games Technologies Inc. (“defendant”)’s motion to dismiss plaintiff Blitz NV, LLC (“plaintiff”)’s complaint. (ECF No. 12). Plaintiff filed a response (ECF No. 16), to which defendant replied (ECF No. 19).

Also before the court is plaintiff’s motion for leave to supplement its response. (ECF No. 20). Defendant filed a response (ECF No. 22), to which plaintiff replied (ECF No. 23).

Also before the court is defendant’s motion to strike that supplement. (ECF No. 25). Plaintiff filed a response (ECF No. 26), to which defendant replied (ECF No. 27).

I. Background

Defendant is a Canadian entity that, as relevant here, operates three websites: (1) i3company.com (the “i3 website”), (2) blitzpoker.com (“Blitzpoker”), and (3) blitzbet.com (“Blitzbet”). (ECF No. 1). Blitzpoker and Blitzbet offering gambling opportunities to customer located in Canada and India, and the products on those sites are not available to users in any other county. (*Id.*) The i3 website is an informational website that gives an overview of defendant’s various businesses. (*Id.*)

1 In November 2018, defendant entered into an agreement with plaintiff's principal, Dan
 2 Bilzerian, in which Bilzerian agreed to promote defendant's products. (*Id.*) This agreement
 3 allowed defendant to use Bilzerian's intellectual property in connection with its brands. (*Id.*) In
 4 particular, defendant was allegedly given permission to use a copyright-protected design the
 5 parties refer to as the "goat skull," which Bilzerian uses as his personal logo. (*Id.*) Defendant
 6 used the goat skull design to promote its websites and its association with Bilzerian. (*Id.*)

7 In December 2020, the agreement was terminated. (*Id.*) Defendant removed the goat
 8 skull design from its websites. (ECF No. 12 at 11). Several months later, in April 2021,
 9 Bilzerian sued defendant in Canada, alleging breach of contract and unjust enrichment stemming
 10 from defendant's use of the goat skull design. (*Id.*) Plaintiff—who owns the goat skull
 11 copyright but was not a party to the original agreement—subsequently brought the instant suit in
 12 October 2021 alleging that defendant's display of the goat skull logo infringed its copyright in
 13 the design. (ECF No. 1). Defendant now moves to dismiss plaintiff's complaint. (ECF No. 12).

14 **II. Legal Standard**

15 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss a
 16 complaint for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). To avoid dismissal
 17 under Rule 12(b)(2), a plaintiff bears the burden of demonstrating that its allegations establish a
 18 *prima facie* case for personal jurisdiction. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th
 19 Cir. 2008). Allegations in the complaint must be taken as true, and factual disputes should be
 20 construed in the plaintiff's favor. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th
 21 Cir. 2002).

22 Personal jurisdiction is a two-prong analysis. First, an assertion of personal jurisdiction
 23 must comport with due process. *See Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668,
 24 672 (9th Cir. 2012). Next, "[w]hen no federal statute governs personal jurisdiction, the district
 25 court applies the law of the forum state." *Boschetto*, 539 F.3d at 1015; *see also Panavision Int'l*
 26 *L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). However, Nevada's "long-arm" statute
 27 applies to the full extent permitted by the due process clause, so the inquiry is the same, and the
 28 court need only address federal due process standards. *See Arbella Mut. Ins. Co. v. Eighth*

1 *Judicial Dist. Court*, 134 P.3d 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065); *see also*
 2 *Boschetto*, 539 F.3d at 1015.

3 Two categories of personal jurisdiction exist: (1) general jurisdiction and (2) specific
 4 jurisdiction. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–15
 5 (1984); *see also LSI Indus., Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).

6 “[T]he place of incorporation and principal place of business are paradigm bases for
 7 general jurisdiction.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (quotation marks and citation
 8 omitted). A court may also assert general jurisdiction over a defendant when the plaintiff shows
 9 that “the defendant has sufficient contacts that approximate physical presence.” *In re W. States*
 10 *Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1131 (D. Nev. 2009) (internal quotation marks
 11 and citations omitted). In other words, the defendant’s affiliations with the forum state must be
 12 so “continuous and systematic” so as to render the defendant essentially “at home” in that forum.
 13 *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). General jurisdiction is appropriate even
 14 if the defendant’s continuous and systematic ties to the forum state are unrelated to the litigation.
 15 *See Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1171 (9th Cir. 2006) (citing
 16 *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414–16).

17 Alternatively, the Ninth Circuit has established a three-prong test for analyzing an
 18 assertion of specific personal jurisdiction:

19 (1) The non-resident defendant must purposefully direct his
 20 activities or consummate some transaction with the forum or
 21 resident thereof; or perform some act by which he purposefully
 22 avails himself of the privilege of conducting activities in the
 23 forum, thereby invoking the benefits and protections of its laws;

24 (2) the claim must be one which arises out of or relates to the
 25 defendant’s forum-related activities; and

26 (3) the exercise of jurisdiction must comport with fair play and
 27 substantial justice, *i.e.*, it must be reasonable.

28 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

1 The Ninth Circuit treats purposeful availment and purposeful direction as separate
 2 methods of analysis. *Wash. Shoe Co.* 704 F.3d at 672. Purposeful availment is for suits
 3 sounding in contract, whereas purposeful direction is for suits sounding in tort. *Schwarzenegger*,
 4 374 F.3d at 802 (citing *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)).

5 **III. Discussion**

6 A. Motions to Supplement and Strike

7 As an initial matter, the court denies plaintiff's motion to supplement its response. The
 8 press release plaintiff seeks to provide as a supplement is dated December 2, 2021, four days
 9 *after* defendant filed the instant motion to dismiss. *See* (ECF Nos. 1; 20). Defendant's delay in
 10 discovering what it terms as "highly relevant" information does not constitute good cause when
 11 that information had been publicly available for nearly three weeks by the time plaintiff filed its
 12 opposition. *See* (ECF No. 20).

13 Moreover, the press release is irrelevant. It states that defendant "announced its strategy
 14 to enter the US market," months after defendant ceased its alleged infringement. (*Id.*) While
 15 defendant may now seek to enter the US market, this press release provides no evidence that
 16 defendant had any interest in the US market at the time of the conduct at issue. The court thus
 17 denies plaintiff's motion to supplement for lack of good cause, and it further denies defendant's
 18 motion to strike that supplement as moot.

19 B. Motion to Dismiss

20 The parties concede that there is no general personal jurisdiction. Therefore, the court
 21 considers only specific jurisdiction.

22 "Copyright and trademark infringement claims, which sound in tort" are subject to the
 23 purposeful direction analysis. *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1208 (9th Cir.
 24 2020). Under the purposeful direction analysis, to satisfy the first prong of specific personal
 25 jurisdiction, the defendant must have "(1) committed an intentional act, (2) expressly aimed at
 26 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum
 27 state." *Wash Shoe Co.*, 704 F.3d at 673 (quoting *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647
 28 F.3d 1218, 1228 (9th Cir. 2011) (internal quotation marks omitted)).

1 Defendant asserts that because the websites on which the allegedly infringing material
 2 was posted are passive—that is, they simply display information rather than allowing customers
 3 to exchange information with the business—there must be “something more” than the website
 4 being available in the jurisdiction to confer specific jurisdiction. (ECF No. 12 at 18–19).
 5 Plaintiff asserts that the websites are not passive, and that defendant’s failure to provide an
 6 alternative forum subjects it to this court’s jurisdiction under Federal Rule of Civil Procedure
 7 4(k)(2). (ECF No. 16 at 12–13).

8 Posting a passive website in the forum state is insufficient to confer personal jurisdiction.
 9 *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419–20 (9th Cir. 1997). Rather, “something
 10 more” is required to show that a defendant purposefully directed its conduct in a substantial way
 11 to the forum state. *Id.* at 418. To satisfy the “something more” element in a copyright claim,
 12 this court has required “express aiming” at the forum state. *See JoshCo Tech, LLC v. Does 1–4*,
 13 No. 2:20-cv-521-JCM-EJY, 2020 WL 6273897, at *5 (D. Nev. Oct. 26, 2020).

14 There is no evidence that defendant’s websites were expressly aimed at Nevada.
 15 Products on Blitzbet and Blitzpoker are not available to residents of Nevada or any other state,
 16 even if the website is technically accessible in the US. Likewise, the i3 website, even though
 17 accessible to Nevada residents, is entirely passive and does not direct its activities meaningfully
 18 toward Nevada. It provides only information about i3 and does not solicit any information from
 19 the user.

20 “Not all material placed on the Internet is, solely by virtue of its universal accessibility,
 21 expressly aimed at every state in which it is accessed.” *Id.* (quoting *Mavrix Photo*, 647 F.3d at
 22 1231). Plaintiff has failed to make a prima facie showing that defendant directed its website
 23 toward Nevada or any other state. Therefore, this court has no specific jurisdiction over
 24 defendant.

25 Alternatively, plaintiff claims Federal Rule of Civil Procedure 4(k)(2) confers jurisdiction
 26 since defendant failed to specify an alternative forum. (ECF No. 16 at 13). Under Rule 4(k)(2),
 27 the plaintiff must prove: (1) the claim at issue arises from federal law; (2) the defendants are not
 28 subject to any state's courts of general jurisdiction; and (3) invoking jurisdiction upholds due

process (namely, that jurisdiction is not unreasonable). *See, e.g., Lang Van, Inc. v. VNG Corporation*, 40 F.4th 1034, 1041 (9th Cir. 2022). Satisfaction of the third prong requires that defendant's activities have been purposefully directed at the United States. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1159 (9th Cir. 2006). Analysis of the third prong under Rule 4(k)(2) is the same as the general "effects" test for personal jurisdiction, except it focuses on contacts with the United States as a whole, rather than on contacts with the forum state. *Id.* Defendant bears the burden of proving jurisdiction is unreasonable. *Lang Van*, 40 F.4th at 1041.

Since products on Blitzbet and Blitzpoker are not available to any US resident and the i3 website is wholly passive, Rule 4(k)(2) is inapplicable. Defendant has done nothing to expressly aim its products at the United States. Indeed, at the time of the conduct in question, defendant did not do business in the United States at all. Therefore, it does not comport with the principles of due process to subject defendant to jurisdiction under Rule 4(k)(2). *See Pebble Beach*, 543 F.3d at 1159. This court finds that it lacks personal jurisdiction over defendant and thus grants its motion to dismiss.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to dismiss (ECF No. 12) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for leave to supplement (ECF No. 20) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that plaintiff's motion to strike (ECF No. 25) be, and the same hereby is, DENIED as moot.

DATED September 30, 2022.


UNITED STATES DISTRICT JUDGE